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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE370

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces receipt of an exempted fishing permit (EFP) application from the Alaska Seafood Cooperative (AKSC) and co-applicants. If granted, this EFP would allow the applicants to remove halibut from a trawl codend on the deck, and release those fish back to the water in a timely manner to increase survivability. These halibut would be sampled by NMFS-trained observers for length and physical condition using standard International Pacific Halibut Commission (IPHC) halibut mortality assessment methods. The objectives of the EFP application are to 1) test methods for sorting halibut on deck for suitability as an allowable fish handling mode for the non-pollock catcher/processor trawl fisheries (Amendment 80, community development quota (CDQ), and trawl limited access) in the Bering Sea and Aleutian Islands under an eventual regulated program; 2) simplify and improve on elements that worked under a 2015 deck sorting EFP project; and 3) address challenges and issues that arose in the 2015 EFP. This experiment has the potential to promote the objectives of the

Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act.

DATES: Comments on this EFP application must be submitted to NMFS on or before *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*. The North Pacific Fishery Management Council (Council) will consider the application at its meeting from February 1, 2016, through February 9, 2016, in Portland, OR.

ADDRESSES: The Council meeting will be held at the Benson Hotel, 309 SW Broadway, Portland, OR 97205. The agenda for the Council meeting is available at *<http://www.npfmc.org>*. You may submit comments on this document, identified by NOAA-NMFS-2015-0162, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0162*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS website at <http://alaskafisheries.noaa.gov/>.

The June 2014 IPHC Report is available from the Council website at <http://www.npfmc.org>.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907-586-7111.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations pursuant to the Convention. The IPHC's

regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

Background

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery. Halibut is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. Halibut caught incidentally by catcher/processors in the nonpelagic trawl groundfish fisheries must be weighed on a NMFS-approved scale, sampled by observers, and returned to the ocean as soon as possible. The Council establishes annual maximum halibut bycatch allowances and seasonal apportionments adjusted by an estimated halibut discard mortality rate (DMR) for groundfish fisheries. The DMRs are based on the best information available, including information contained in the annual Stock Assessment and Fishery Evaluation report, available at <http://www.alaskafisheries.noaa.gov/>. NMFS approves the halibut DMRs developed and recommended by the IPHC and the Council for the BSAI groundfish fisheries for use in monitoring the halibut bycatch allowances and seasonal apportionments. The IPHC developed these DMRs for the BSAI groundfish fisheries using the 10-year mean DMRs for those fisheries.

Directed fishing in a groundfish fishery closes when the halibut mortality apportionment for the fishery is reached, even if the target species catch is less than the seasonal or annual quota for the directed fishery. In the case of the Bering Sea flatfish fishery, seasons have been closed before fishery quotas have been reached to prevent the fishery from exceeding the halibut mortality apportionment.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), halibut mortality apportionments were established for the Amendment 80 sector and for Amendment 80 cooperatives. Amendment 80 is a catch share program that allocates several BSAI non-pollock trawl groundfish fisheries (including the flatfish fishery) among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act trawl catcher/processor sector. Though halibut mortality apportionments provide Amendment 80 cooperatives more flexibility to use available mortality, halibut mortality continues to constrain fishing in some Amendment 80 fisheries. Therefore, this sector is actively exploring ways to continue to reduce halibut mortality.

Before incidentally caught halibut are returned to the sea, at-sea observers must estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 assure that observer estimates of halibut and groundfish catch are credible and accurate, and that potential bias is minimized. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a codend, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

In 2009 and 2012, halibut mortality experiments were conducted by members of the Amendment 80 sector under EFP 09-02 (74 FR 12113, March 23, 2009) and EFP 12-01 (76 FR 70972, November 16, 2011). By regulation, all catch including halibut is moved across a flow scale below deck before the halibut is returned to the sea. Halibut mortality increases with increased handling and time out of water. Under the 2009 and

2012 EFPs, experimental methods for sorting catch on a vessel's deck allowed halibut to be returned to the sea in less time, with less handling relative to halibut routed below deck and over the flow scale. The halibut mortality during flatfish fishing under the 2009 and 2012 EFPs was estimated to be approximately 17 metric tons (mt) and 10.8 mt, respectively, less than the amounts estimated from the DMR for this fishery. The reduced halibut mortality under the 2009 and 2012 EFPs is attributed to the improved condition of halibut through reduced handling and time out of water.

In 2015, test fishing under EFP 2015-02 (80 FR 3222, January 22, 2015) expanded on results of the 2009 and 2012 EFPs to explore the feasibility of deck sorting halibut in additional fisheries, on more vessels, and during a longer interval of time during the fishing season. The primary objective was to reduce halibut mortality in the Amendment 80 groundfish fisheries in 2015. Fishing under the EFP began in May and continued through November. The most prominent result from the 2015 EFP was that substantial halibut mortality savings were achieved from deck sorting on catcher/processors operating in non-pollock Bering Sea fisheries. The preliminary estimate of halibut savings under the 2015 EFP is 131 mt. For the nine vessels that participated in the 2015 EFP, all but one achieved mortality rates in the range of 41 percent to 53 percent, compared to the standard mortality rate of 80 percent in the Bering Sea flatfish fisheries without deck sorting (average across target fisheries of interest for the 2015 EFP).

Reducing halibut mortality is a high priority for the IPHC, the Council, and NMFS. In June 2014, the Council received a report from the IPHC about the impact of halibut bycatch in the groundfish fisheries on the short- and long-term yields in the

directed halibut fishery. The IPHC report (see **ADDRESSES**) presented scenarios under which increases in halibut bycatch or decreases in the exploitable halibut biomass would result in no directed fishery yield in IPHC Management Area 4CDE per the IPHC's harvest policy. At its June 2014 meeting, the Council passed a motion requesting all groundfish industry sectors to undertake voluntary efforts to reduce halibut mortalities in the BSAI resulting from halibut bycatch, as well as discards in the directed fishery, by 10 percent from the current 5-year average levels, through the 2014-15 fishing seasons. The Council also encouraged NMFS to work closely with the Amendment 80 sector to develop deck sorting procedures and technologies that could reduce halibut mortalities with the eventual goal of implementing a full-scale program. In 2015, in part due to these voluntary efforts and deck sorting procedures, 43 percent (1,888 mt) of halibut prohibited species catch (PSC) was unused and "left in the water." In 2014, by comparison, 22 percent (985 mt) of halibut PSC was unused. The total halibut mortality in the BSAI in 2015 was 2,537 mt.

In June 2015, the Council took final action to reduce halibut PSC mortality limits in the BSAI groundfish fisheries overall from 4,426 mt to 3,515 mt, a 21 percent reduction. The Council took final action to reduce the halibut PSC mortality limit for the Amendment 80 sector by 25 percent, from 2,325 mt to 1,745 mt per year. NMFS published a proposed rule to implement Amendment 111 and these PSC reductions to the FMP for groundfish of the BSAI on November 16, 2015 (80 FR 71650).

Proposed Action

On December 16, 2015, the AKSC, an Amendment 80 cooperative, submitted an application for an EFP for 2016 to build on the information collected in prior deck sorting

EFPs and further reduce halibut mortality in the Amendment 80, CDQ, and trawl limited access sectors. The objectives of the proposed 2016 EFP are to test modifications to the procedures and approaches in the 2015 EFP that 1) move substantively towards implementation of deck sorting as an allowable fish handling mode for the non-pollock catcher-processor trawl fisheries in the BSAI; 2) simplify and improve on elements that worked from the 2015 EFP; and 3) address challenges and issues that arose in the 2015 EFP. Consistent with 2015 methods, the EFP would allow crew on board catcher/processors to sort halibut removed from a codend on the deck of the vessel. Those sorted halibut could be released back to the water after the halibut are measured for length and tested for physical condition using standard IPHC viability assessment methods.

The applicants propose to test several new aspects that would inform a future, operationalized deck sorting process in Federal regulations:

- 1) Observers instead of sea samplers would be used to track and monitor halibut sorted on deck;
- 2) A single set of procedures would be used to account for halibut on EFP trips, i.e., vessels would not be able to switch between EFP and normal hauls on a single trip; and
- 3) Concepts for halibut holding tanks on deck would be tested.

The applicant proposes to begin EFP fishing in May 2016 and end on December 31, 2016. The EFP would allow halibut to be sorted, sampled, and released prior to being weighed on a flow scale, to achieve the experimental objectives and reduce halibut mortality. This EFP application requests an amount of halibut PSC mortality for vessels

engaged in experimental fishing not to exceed the 2016 halibut PSC mortality apportionments set out in Table 14 of the Final 2015 and 2016 Harvest Specifications (available at https://alaskafisheries.noaa.gov/sites/default/files/15_16bsaitable14.pdf). Participants request no additional groundfish or halibut quota as part of this EFP application, and all groundfish catch will accrue against the appropriate Amendment 80, CDQ, or trawl limited access sector catch and PSC allowances.

Participating vessels would procure and use three NMFS-trained at-sea observers during EFP trips. Observers would perform all of their duties on deck and in the factory during 8-hour shifts, leaving up to four hours per observer per day for error checking and the additional work to enter data for halibut sorted on deck. Work shifts would not exceed 12 hours per observer. Three observers would therefore work overlapping 12-hour shifts for continuous coverage to track the amount of halibut mortality for fish sorted on deck to determine halibut mortality amounts from EFP-permitted vessels.

Using observers instead of sea samplers as in the 2015 EFP would resolve some of the issues that emerged in 2015 regarding equipment usage, long shifts with few breaks, training, lines of authority, and timely access to the data. Observers would be able to enter and extrapolate data via the NMFS Catch Accounting System so PSC usage by EFP participants would be reported and tracked in near real-time along with non-EFP participants' usage and would accrue against the sectors' halibut PSC mortality apportionments. If the halibut mortality apportionment is reached, the EFP permit holder would notify NMFS and end EFP fishing. As required by existing regulations, Amendment 80 fishing will also cease when the annual halibut mortality apportionment is reached.

The applicants propose a modified factory sampling procedure relative to the one used in 2015. Under the 2015 EFP, halibut that were not sorted on deck were collected by the crew in the factory under the supervision of a sea sampler. The sea sampler measured all halibut collected in the factory, and a mortality rate of 90 percent was used to determine total halibut mortality in the factory. The observers did not account for halibut mortality on EFP hauls in 2015, rather the EFP participants and sea samplers determined and tracked halibut mortality for EFP hauls.

In 2016, halibut that are not sorted on deck would flow to the factory and would be available to the observer for sampling. The on-duty observer would collect species composition samples per standard protocols to estimate the proportion of halibut in the haul relative to other species. The proportion of halibut estimated to be in the haul would be extrapolated to the total haul catch weight to estimate the total amount of halibut not sorted on deck. A mortality rate of 90 percent would be applied to the amount of halibut in the factory to estimate the halibut mortality from the factory. The resulting factory halibut mortality amount would be combined with the amount of halibut mortality estimated in the deck-sorted portion of the haul to estimate the total halibut mortality for each EFP haul.

The following example is provided as an illustration for how total halibut mortality would be calculated for a haul under the 2016 EFP. Assume a vessel catches 400 kilograms (kg) of halibut in one haul. Assume 92 percent of the halibut is removed on deck and the vessel achieves a halibut discard mortality of 50 percent by releasing these fish from deck. In this example, the amount of halibut mortality on deck is 184 kg. A halibut mortality of 90 percent is applied to the 32 kg of halibut that are sampled in the

factory, resulting in a halibut mortality of 28.8 kg in the factory. In this example, the total halibut mortality for the haul is 212.8 kg.

The halibut mortality data collected by observers would be available to NMFS in near-real time for inseason management in 2016. In addition to the observer samples, under the 2016 EFP, vessel crew would conduct a census of halibut in the factory, after they have been available to the observer for sampling, to compare observer estimates of total halibut and census results.

Under the 2015 EFP, vessels could switch between EFP fishing and regular commercial fishing during a single fishing trip. In 2016, EFP participants would operate under a single catch handling and accounting method for all hauls on a fishing trip designated as an EFP trip. This modification is expected to reduce potential confusion aboard the vessel and improve efficiency for catch accounting and scientific personnel. Operators of participating vessels would still have a way to opt out of sorting on deck when it is potentially unsafe or when the vessel has located a fishing area where halibut bycatch is very low.

The applicants propose to test the concept of holding deck-sorted halibut in tanks with recirculating sea water on the deck of the vessel to minimize post-release depredation by orcas and to improve halibut viability if observer sampling cannot keep pace with the deck-sorting by crew. During EFP fishing in 2015, some participants noted that depredation by orcas on post-release, deck-sorted halibut was at times high, especially in the arrowtooth flounder target fishery. The option of holding halibut in sea water tanks would allow the vessel to wait or change location and release halibut when or where they are less likely to be depredated. Another potential benefit of holding deck-

sorted halibut in tanks would be to maintain or improve the halibut's viability by placing them in oxygenated water if sampling by the observer fell behind the pace of sorting.

This proposed action would exempt participating catcher/processors from selected 50 CFR part 679 prohibitions, and monitoring and observer requirements. Should the Regional Administrator issue a permit based on this EFP application, the conditions of the permit will be designed to minimize halibut mortality and any potential for biasing estimates of groundfish and halibut mortality. Vessels participating in EFP fishing may be exempt from, at minimum, the following regulations:

1. the prohibition against interfering with or biasing the sampling procedure employed by an observer including physical, mechanical, or other sorting or discarding of catch before sampling, at § 679.7(g)(2);
2. the requirements to weigh all catch by an Amendment 80 vessel on a NMFS-approved scale at § 679.93(c)(1) and by all vessels at § 679.28(b);
and
3. the requirement to return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition at § 679.21(b)(2)(ii).

In 2017, the AKSC would be required to submit to NMFS a report of the EFP results after EFP experimental fishing has ended in 2016. The report would include a comparison of halibut mortality from halibut sampled during the EFP and an estimate of halibut mortality under standard IPHC halibut mortality rates for those target fisheries. Additionally, the report should compare the estimated amount of halibut sampled by observers in the factory with the census of halibut collected in the factory by vessel crew

to evaluate the precision and associated variance of sampled-based extrapolations and to inform a decision of the best way to account for factory halibut in a regulated program. Finally, the report should evaluate the effectiveness of using sea water holding tanks on deck to improve the viability and minimize depredation by orcas on deck-sorted halibut.

Under the EFP, participants would be limited to their groundfish allocations under the 2016 harvest specifications. The amount of halibut mortality applied to the EFP activities would be subject to review and approval by NMFS.

This EFP would be valid upon issuance in 2016 until either the end of 2016 or when the annual halibut mortality apportionment is reached in areas of the BSAI open to directed fishing by the various sectors. EFP-authorized fishing activities would not be expected to change the nature or duration of the groundfish fishery, gear used, or the amount or species of fish caught by the participants.

The fieldwork that would be conducted under this EFP is not expected to have a significant impact on the human environment as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the EFP application during its February 2016 meeting, which will be held at the Benson Hotel in Portland, OR. The EFP application will also be provided to the Council's Scientific and Statistical Committee for review at the February Council meeting. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the February 2016 Council meeting during public testimony or until *[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*. Information regarding the meeting is available at the Council's website at <http://www.npfmc.org>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 20, 2016.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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